IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.MC.No. 577 of 2007()

---

ST.384/1996 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR

.....

PETITIONER: ACCUSED:

---

SABU JACOB, THANNICHUVATIL HOUSE,
KAIPUZHA, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS: COMPLAINANT & STATE:

---

1. V.K. SOMAN ACHARI, VELLAPPALLIL HOUSE,
NEENDOOR, KOTTAYAM.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

- - - - - - - - - - - - - - - - - - - - - -

Crl.M.C.No. 577 of 2007

- - - - - - - - - - - - - - - - - - - - - -

Dated this the 1st day of March, 2007

**O R D E R**

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The case was filed as early as in 1991. It has had chequered career. By Annex.1 order, this court had directed that proceedings must be completed within a period of six months from the date on which the parties appear before the learned Magistrate. The parties appeared on 12.12.2006. The case was adjourned to 3.1.2007. There was no sitting on that day. The case was adjourned to 20.1.2007. On that day, the complainant reported that he has no further evidence to be adduced. Thereafter the case was posted for defence evidence to 3.3.2007. It is not seen that the case was posted for S.313 examination in between. I must assume that such examination under Section 313 must also have been over before Annex.1 order was passed.

2. Be that as it may, when the case was posted to 3.3.2007 the petitioner filed an application on 24.2.2007 to advance the hearing of the case, to issue summons to the witnesses and to permit him to be

examined as a witness. That application was dismissed by Annex.5. The learned counsel for the petitioner submits that the case was posted for the first time for defence evidence to 3.3.07. The petitioner had filed the application on 24.2.07 praying for issue of summons. This court had made it clear that the parties can seek assistance of the court for summoning witnesses. But it shall be their responsibility to make available the witnesses sought to be examined by them. The learned Magistrate, in these circumstances, need only have directed handing over of the summons to the petitioner and the petitioner would have ensured that the witnesses do appear before the court on 3.3.07. Not having done that, the course adopted by the learned Magistrate has virtually denied the petitioner opportunity to adduce evidence, it is submitted. Even going by Annex.1 order, the petitioner is entitled atleast for two opportunities to give evidence. He had not been given even one opportunity as the matter stands posted for defence evidence at the first instance to 3.3.07.

3. I have anxiously considered the submissions made by the learned counsel for the petitioner. I have perused Annex.5 order. I am of opinion that it is not necessary to wait for issue and return of notice to the respondent/complainant, which would further cause protraction of the

proceedings. I am satisfied that this Crl.M.C. can be allowed and appropriate directions can be issued.

4. The learned counsel for the petitioner submits that the petitioner is asking only for three reliefs. He wants the Manager of the drawee bank to be examined as a witness. He should appear along with some documents. Summons to that effect can be handed over to the petitioner and the petitioner shall ensure the appearance of that witness on the next date of posting. The second relief the petitioner prays for is that he himself may be examined as a witness. He shall make necessary application under Section 315 Cr.P.C. on 3.3.07. He wants to be examined. Thirdly it is prayed that the complainant may be permitted to be recalled for cross examination. The complainant had appeared before court on the last date of posting, it is submitted. I am satisfied, in these circumstances, that the said three requests can be allowed without waiting for appearance of the respondent.

5. This Crl.M.C. is accordingly allowed. On 3.3.2007 the petitioner shall be permitted to be examined as a witness, if he files the requisite application under Section 315 Cr.P.C. The complainant shall be permitted to be further cross examined also on 3.3.07. If the complainant prays for time, such further cross examination can be adjourned to the next date of

hearing. Summons to secure the presence of the Bank Manager shall be handed over to the petitioner, if he takes the necessary steps on 3.3.07. The case shall be posted to the next date for examination of such Manager. These directions shall ensure that the learned Magistrate shall be able to comply with the directions regarding disposal issued in Annex.3. The above directions are issued and this Crl.M.C. is allowed in part.

**(R. BASANT)**
Judge

HO
tm